

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

WASTE CONNECTION OF OREGON, INC.
d/b/a ARROW SANITARY

Employer

and

Case 36-RC-6111

TEAMSTERS LOCAL UNION NO. 305
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a Voting Group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All residential drivers, residential/commercial recycler drivers,
residential yard debris drivers, commercial bale route drivers employed

1. The Parties filed timely briefs, which were considered.

by the Employer at its Portland, Oregon facility; but excluding mechanics, office clerical employees, dispatchers, guards and supervisors as defined in the Act.

I. Statement of Facts

A. Introduction

Waste Connections of Oregon, Inc. d/b/a Arrow Sanitary (hereinafter “the Employer”) is an Oregon corporation engaged in the operation of waste disposal in Portland, Oregon. Petitioner seeks to add residential drivers, residential/commercial recycler drivers, a residential yard debris driver, and commercial bale route drivers (hereinafter “unrepresented employees” or “petitioned-for employees”) to an existing unit of refuse drivers (hereinafter collectively called “represented employees,” “unit employees” or “existing unit”). Petitioner currently represents the existing unit. No other labor organization seeks to represent the unrepresented employees.

The Employer opposes the petition on the grounds that the petitioned-for employees lack a community of interest with the existing unit and argues that the petitioned-for employees constitute a separate and distinct unit. At issue here is whether the petitioned-for employees share a community of interest with the existing unit sufficient to allow the former to vote either to be included in the existing unit or to remain unrepresented, or whether they may be represented only in a separate unit. The parties stipulated that whatever the answer on the separate/included issue, dispatcher, mechanics and office clericals should be excluded

Through a series of recent mergers and acquisitions, the Employer now employs both represented and unrepresented drivers who collect trash and recycled products. In general, the represented drivers primarily perform commercial trash and recycling collection and the unrepresented drivers primarily perform commercial and residential recycling collection,² and residential trash collection.

B. The Existing and Petitioned-for Units

a. Existing Unit

The existing unit consist of eight front-load drivers and eleven roll-off drivers.³ Front-load drivers operate garbage trucks that lift containers (i.e., dumpsters) over the top of the cab and deposit their contents in the back of the truck. This work is done for commercial customers.

² There is one exception to this generalized statement. There is one represented residential driver, who collects residential trash and deposits it into a rear-loading garbage truck. The current Labor Agreement does not cover residential drivers. However, the one represented residential driver was grandfathered into the existing unit during the Employer’s acquisition of another union garbage-collection company. By agreement of the parties, this residential driver is considered part of the existing unit. However, the agreement of the parties is limited to this driver. The Employer refuses to recognize any other residential driver under the Labor Agreement.

³ In addition, there is one residential driver referenced above in footnote 2.

Front-load drivers typically work from about 5:30 am until 3:00pm and currently earn \$16.25 per hour.⁴

Roll-off drivers deliver and haul off larger, dumpster-like containers like those commonly found at construction sites. Roll-off drivers perform both trash and recycled-product collection. Like the work performed by front-load drivers, this work is for commercial customers. Because the employer offers this service to its customers twenty-four hours a day, roll-off drivers work a variety of shifts around the clock and earn between \$16.25 and \$16.70 per hour. Both front-load and roll-off drivers must possess a Class B commercial driver's license.

b. Petitioned-for Voting Group

The petitioned-for voting group consists of residential drivers, residential/commercial recycling drivers, a residential yard debris driver, and commercial bale route drivers, for a total of nine drivers. There are four residential drivers who pick up curbside trash and deposit it into the back of a rear-loading garbage truck. Residential drivers typically work from about 5:30 am to 3:00 pm and currently earn wages between \$13.00 and \$16.48.

There are two residential/commercial recycling drivers who perform curbside recycling pick-up service. The recycling drivers separate and deposit recyclable products into a side-loading truck. They typically work from 5:30 am to 3:30 pm and currently earn wages between \$13.75 and \$14.00 per hour.

There is one residential yard debris driver. The residential yard debris driver picks up curbside yard debris from residential customers and deposits it into a side-loading truck. He typically works from 6:00 am to anywhere between 11:00 am and 3:00 pm, depending on the season, and currently earns \$14.42 per hour.

There are two commercial bale route drivers who pick up and deliver large bales of recyclable cardboard, from the customer to a recycler. One driver operates an eighteen-wheel flatbed tractor-trailer and the other operates a cube van, described as similar to a Ryder or U-Haul moving truck. This work is done for commercial customers. The tractor-trailer driver typically works from 4:00 am to about 3:00 pm and earns \$16.74 per hour. The cube driver typically works from 4:00 am to about 1:00 pm and earns \$14.00 per hour. Operation of the tractor-trailer requires a Class A commercial drivers license, but all other jobs in the petitioned-for unit require a Class B commercial drivers license.

c. Additional Community of Interest Facts

The Employer operates one facility in Portland, Oregon located at 12820 N.E. Marx. All drivers, both represented and unrepresented, begin and end their shifts at this facility. The

⁴ There is one front-load driver who sometimes makes \$17.25 per hour when he drives the truck alone. This is a unique and temporary situation. This individual has a partial disability and plans on retiring on February 28, 2001. He normally works as a helper for front-load drivers, however the Employer made special wage-earning arrangements if he is needed to work alone. This arrangement is unique to this individual and will discontinue upon his retirement.

Employer also owns, parks and maintains its fleet of trucks at this facility. In addition, all drivers, whether represented or unrepresented, share the same break room and time clock at the Employer's facility.

All drivers, both represented and unrepresented, have the same first-level supervisor, Operations Manager Ron Guirl. All drivers wear the same uniform. Upon their initial hire, all drivers are subject to the same ninety-day probationary period, Department of Transportation physical exam and drug test. Unit drivers are paid an hourly wage, ranging from \$16.25 to \$16.70 per hour. Unrepresented drivers are paid an hourly wage, ranging from \$13.00 to \$16.74 per hour.

There is a regular employee interchange – both permanent and temporary - between existing unit drivers and petitioned-for drivers. Over the past three years, there have been drivers initially hired into petitioned-for positions that have permanently switched to unit positions, and vice versa. On regular occasion, there are both represented and unrepresented “floater” drivers, who temporarily replace drivers both in their own, and in the other, grouping.⁵

II. Discussion

Under Section 9(b) of the Act, the Board has broad discretion to determine “the unit appropriate for the purposes of collective bargaining” in each case “in order to assure employees the fullest freedom in exercising the rights guaranteed by the Act.” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units that may be appropriate in any given factual setting; it need not choose the most appropriate unit. See *American Hospital Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). Among the range of appropriate units, the Board may select an *Armour-Globe* self-determination election in which employees choose either to be included in an existing unit or remain unrepresented. See *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990); *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937);

An incumbent union seeking to represent employees residual to those in its existing unit *must* do so by adding them to the existing unit, usually by means of a self-determination election. See *St. John's Hospital*, 307 NLRB 767 (1992). The Board requires that employees in a residual “unit” share a community of interest with employees in the existing unit. See *Warner-Lambert Co.*, 298 NLRB 993 (1990); *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972). Community of interest factors include common work sites, common supervision, the nature of employee skills and functions, the degree of functional integration, interchangeability and contact among employees, as well as commonalities in general working conditions. See, e.g., *R-N Market*, 190 NLRB 292 (1971) (work situs); *Sears, Roebuck & Co.*, 191 NLRB 398 (1971) (common supervision); *Seaboard Marine Ltd.*, 327 NLRB 556 (1999) (nature of employee skills and functions); *Atlanta Hilton & Tower*, 273 NLRB 87 (1984) (degree of functional integration);

⁵ Unfortunately, the anecdotal record does not indicate -for temporary or permanent- the specific number of occasions, the hours involved, or a showing of the percentage of hours/occasions compared to the total. The record would indicate that the various interchanges cited are not flukes, and that the examples cited in the record are not exhaustive.

J.C. Penny Co., 328 NLRB 766 (1999) (interchange and contact among employees); *Allied Gear & Machine Co.*, 250 NLRB 679 (1980) (general working conditions). No one factor should receive more weight than another; rather the Board should review the factors, as a whole, in determining community of interest. See *Hotel Services Group, Inc.*, 328 NLRB 116 (1999).

The employees in the petitioned-for voting group sufficiently share a community of interest with the existing unit to warrant an *Armour-Globe* self-determination election. All employees, both represented and non-represented, work out of the same facility and are supervised by the same first-level supervisor, the operations manager. Despite minor differences, all employees drive trucks that collect and deliver garbage or recycled products. They all wear the same uniform, make similar, hourly wages⁶, share the same break room and punch in at the same time clock. In addition, there is a considerable amount of employee interchange between unit positions and petitioned-for positions, both with respect to permanent moves as well as temporary moves (i.e., floaters). The Employer points to the differing wages, but the differences themselves are not that substantial. The existing unit's wages lie in the \$16.25 - \$16.48 range. The petitioned-for employees' lie between \$13.00 and \$16.48. The lowest paid petitioned-for employee is paid 80% of the lowest paid existing-unit employee. The highest paid petitioned-for employee receives 101% of the highest paid unit employee. As discussed, the wage comparison is not particularly apt in any event. I note that there are day drivers and night/very early morning drivers in each group, predominantly class B drivers in each group, and recycling and refuse drivers in each. There really is nothing that sets the two groups apart in a distinctive way.

All of the factors described in the preceding paragraph, as well as the record in a whole, demonstrate a substantial community of interest between the petitioned-for employees and the existing unit. For all of the aforementioned reasons, I conclude – without deciding if it is necessary to do so⁷ – that the petitioned-for group is not a unit appropriate for collective bargaining. Thus, it cannot stand alone. Since the parties have agreed on the appropriate composition of the unit/voting group, it follows that self-determination election is appropriate.

CONCLUSION

In conclusion, I find that the aforementioned Voting Group is an appropriate voting group.

If a majority of the valid votes in the election are cast for Petitioner, the employees will be deemed to have indicated the desire to be represented by Petitioner and to be included in the existing unit currently represented by Petitioner, and Petitioner would then bargain for those employees as part of that unit. In such an event, the following unit would be appropriate for purposes of collective bargaining:

⁶ The significance of any differences in wages between the two groups is undercut by the fact that the represented employees' wages are determined by collective bargaining, while the unrepresented employees' are determined solely by the Employer. This is not to say that is automatic that collective bargaining produces higher wages, but only that the difference in wages were set by separate wage determination methods. Since the wage levels were not both set unilaterally by the Employer, they do not necessarily imply underlying differences in jobs.

⁷ I have believe it likely that even if the petitioned-for unit *could* stand as a separate appropriate unit, the Union would be entitled to a self-determination election in any event.

All drivers employed by the Employer at its Portland, Oregon facility; excluding all other employees (including mechanics), guards and supervisors (including dispatchers) as defined in the Act.

If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented.

There are approximately 9 employees in the Voting Group.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Voting Group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Voting Group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS LOCAL UNION NO. 305, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO. As noted, if a majority of voters vote for representation, it will be as part of the existing unit. If they vote against representation, they will remain unrepresented.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access

to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized, full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge in Portland, Oregon within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Subregional Office, 601 SW 2nd Avenue, Room 1910, Portland, Oregon 97204, on or before January 23, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by January 30, 2002. [Because of delays in U.S. Mail destined for government offices in Washington, caused by mail diversion for biological contamination prevention, the undersigned strongly recommends the use of private services for transmission of any Request. Fax transmissions are not accepted.]

DATED at Seattle, Washington this 16th day of January 2002.

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